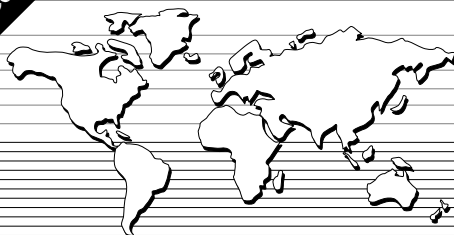




U.S. Department of the Treasury
Office of Foreign Assets Control



IRAQ

What You Need To Know About The U.S. Embargo

An overview of the Iraqi Sanctions Regulations -- Title 31 Part 575 of the U.S. Code of Federal Regulations

■ **INTRODUCTION** - On August 2, 1990, upon Iraq's invasion of Kuwait, former President Bush issued Executive Order No. 12722 declaring a national emergency with respect to Iraq. The order, issued under the authority of the International Emergency Economic Powers Act (50 U.S.C. 1701), the National Emergencies Act (50 U.S.C. 1601), and section 301 of title 3 of the U.S. Code, imposed economic sanctions, including a complete trade embargo, against Iraq. In keeping with United Nations Security Council Resolution 661 of August 6, 1990 and the United Nations Participation Act (22 U.S.C. 287c), the President also issued Executive Order 12724 on August 9, 1990, which imposed additional restrictions. Similar sanctions were imposed on Kuwait to ensure that no benefit from the United States flowed to the Government of Iraq in military-occupied Kuwait. The Iraqi Sanctions Regulations implement Executive Orders No. 12722 and 12724. They were issued and are administered by the Treasury Department's Office of Foreign Assets Control (OFAC). The summary which follows is intended as a broad overview of the Regulations.

Criminal penalties for violating the Iraqi Sanctions Regulations range up to 12 years in jail and \$1,000,000 in fines. In addition, civil penalties of up to \$275,000 per violation may be imposed administratively.

■ **ASSETS BLOCKED** - Effective August 2, 1990, the President blocked all property and interests in property of the Government of Iraq, its agencies, instrumentalities, and controlled entities, in the United States or within the possession or control of U.S. persons. Persons and organizations determined by the Secretary of the Treasury to fall within any of those categories are subject to treatment as if they were the government of Iraq itself. This enables Treasury to designate Iraqi "front" organizations that may be operating in third countries as "Specially Designated Nationals of Iraq," thus subjecting them to the Iraqi sanctions. Blocked accounts in U.S. financial institutions must earn interest at commercially reasonable rates; funds are not to be held in instruments with a maturity exceeding 90 days. Setoffs against blocked accounts are prohibited.

The following activities are prohibited, unless licensed by the Office of Foreign Assets Control:

■ **BUYING FROM IRAQ** - Except as provided for under UNSC

Resolution 986 (see below), goods or services cannot be imported into the United States either directly or through third countries. Any activity that promotes or is intended to promote such importation is prohibited.

■ **SELLING TO IRAQ** - Goods, technology or services cannot be exported from the United States, or, if subject to U.S. jurisdiction, exported or reexported from a third country, to Iraq (notwithstanding authorization from another government agency) with the exception of OFAC-licensed food, medical supplies intended to relieve human suffering and certain other humanitarian goods. In no circumstances has the use of blocked funds been authorized for humanitarian sales. Any activity that promotes or is intended to promote a prohibited exportation or reexportation, or the transshipment of goods, services, or technology subject to U.S. jurisdiction through a third country, is also prohibited.

An exporter who shipped merchandise to Iraq prior to August 2, 1990 and who is the beneficiary of a letter of credit, issued or confirmed by a U.S. bank, or a letter of credit involving a reimbursement confirmed by a U.S. bank may apply to OFAC for a specific license authorizing payment under the letter of credit. A specific license authorizing payment under such a letter of credit will only be issued for a delivery to Iraq which occurred after August 2 if the exporter made a good faith effort to divert the delivery.

■ **OFFSHORE TRANSACTIONS** - Generally, U.S. persons are prohibited from dealing in Iraqi-origin goods or in any other goods exported from Iraq to any country after August 6, 1990. U.S. persons are also prohibited from dealing in property intended for exportation to Iraq from any country.

Performance of contracts in support of industrial, commercial, public utility or governmental projects in Iraq is also generally prohibited. Provisions prohibiting performance are very broadly construed to prohibit any financial, sales, or service contract that will have an impact on projects in Iraq. U.S. persons may not, for example, provide financing or consulting services to a third-country company, where those services would inure to the benefit of a project in Iraq. Banks need to be very careful that their foreign corporate accounts are not used in connection with Iraqi projects or commercial activities.

While foreign subsidiaries of U.S. firms are not subject to the Regulations, U.S. parent corporations and all U.S. citizens or residents, wherever located, are strictly prohibited from approving or providing financial assistance, advice, consulting services, goods, or any other support to subsidiaries in connection with Iraqi projects.

■ **UNSC RESOLUTION 986** - On April 14, 1995, the United Nations Security Council adopted Resolution 986 ("UNSCR 986") which, subject to certain conditions, established a program to allow the Government of Iraq a six month window in which to sell \$2 billion of petroleum and petroleum products, the proceeds of which would be used to purchase humanitarian supplies. Proceeds are to be deposited into a special account at Banque Nationale de Paris' New York branch which will be used to fund the purchases. The Secretary General of the United Nations has now announced the implementation of the program and the Regulations have been amended accordingly.

U.S. persons are authorized to enter into executory contracts with the Government of Iraq relating to the following authorized transactions: the purchase and exportation from Iraq of Iraqi-origin petroleum and petroleum products; the trading, importation, exportation or other dealings in or related to Iraqi-origin petroleum and petroleum products outside Iraq; the sale and exportation to Iraq of parts and equipment that are essential for the safe operation of the Kirkuk-Yumurtalik pipeline system in Iraq; and the sale and exportation to Iraq of medicines, health supplies, foodstuffs, and materials and supplies for essential civilian needs.

All executory contracts must meet the following requirements: the executory contracts and all other related contracts must be consistent with the requirements of UNSCR 986, any other applicable UNSC Resolutions, memoranda, and any further guidance issued by the 661 Sanctions Committee and executory contracts involving any transactions subject to license application requirements by another Federal agency must be contingent upon prior authorization of such agency. Actual performance under any executory contract requires the issuance of a separate specific license by OFAC (see below). The authorization for executory contracts by U.S. persons includes contracts with third parties incidental to permissible executory contracts with the Government of Iraq.

Section 575.523 of the Regulations now provides a statement of licensing policy for U.S. persons seeking to purchase petroleum and petroleum products from the Government of Iraq or Iraq's State Oil Marketing Organization ("SOMO") pursuant to UNSCR 986. A specific license must be issued by OFAC to authorize a licensee to deal directly with the United Nations 661 Committee or its designee (the "overseers") appointed by the UN Secretary-General. Applications for specific licenses from OFAC must include the following information: (1) applicant's full legal name; (2) applicant's mailing and street addresses; (3) name of the individual(s) responsible for the license application and related commercial transactions and the individual's telephone and facsimile numbers; (4) if the applicant is a business entity, the state or jurisdiction of incorporation and principal place of business; (5) a written certification that the applicant has entered into an executory contract for the purchase of Iraqi-origin petroleum or petroleum products with the Government of Iraq, that the contract accords with normal arms-length commercial practice, and that the applicant is familiar with the Regula-

tions, particularly Sections 575.601 and 575.602, and will make its executory contract and other documents related to the purchase of Iraqi-origin petroleum or petroleum products available to OFAC; and (6) a written certification that the applicant understands that issuance of a license does not authorize a licensee to provide goods, services, or compensation of any kind to the Government of Iraq other than that specifically provided in contracts entered into by the applicant and the Government of Iraq and submitted to and approved by the UN 661 Committee or its designee. Following the issuance of a specific license OFAC will coordinate with the U.S. State Department the provision of a list of licensed "national oil purchasers" to the UN 661 Committee. OFAC licensees whose contracts are ultimately approved by UN overseers will be permitted to perform those contracts in accordance with their terms. Section 575.526 of the Regulations provides a general license for dealing in, and importation into the United States of, Iraqi-origin petroleum and petroleum products, the purchase and exportation of which have been authorized in accordance with UNSCR 986.

Section 575.524 of the Regulations provides a statement of licensing policy for the exportation to Iraq of pipeline parts and equipment necessary for the safe operation of the Iraqi portion of the Kirkuk-Yumurtalik pipeline system. Applications for such specific licenses must be made to OFAC in advance of the proposed sale and exportation and provide the following information: (1) identification of the applicant, including full legal name, mailing and street addresses, the name of the individual(s) responsible for the application and related commercial transactions and the individual's telephone and facsimile numbers, and, if the applicant is a business entity, the state or jurisdiction of incorporation and principal place of business; (2) the name and address of all parties involved in the transactions and their role, including financial institutions and any Iraqi broker, purchasing agent, or other participant in the purchase of the pipeline parts or equipment; (3) the nature, quantity, value and intended use of the pipeline parts and equipment; (4) the intended point(s) of entry into Iraq, proposed dates of entry and delivery, and the final destination in Iraq of the pipeline parts and equipment; (5) a copy of the concluded contract with the Government of Iraq and other relevant documentation, all of which must comply with the provisions of UNSC Resolution 986, other applicable Security Council resolutions, the Memorandum of Understanding, and applicable guidance issued by the 661 Committee; and (6) a statement that the applicant is familiar with the requirements of the above-referenced documents, particularly Memorandum of Understanding paragraph 24 and Guidelines paragraphs 35 and 45, and will conform the letter of credit and related financing documents to their terms.

Section 575.525 of the Regulations provides a statement of licensing policy for the sale of humanitarian items to Iraq. Applications for specific licenses must be made to OFAC in advance of the proposed sale and exportation and provide the following information: (1) identification of the applicant, including full legal name, mailing and street addresses, the name of the individual(s) responsible for the application and related commercial transactions and the individual's telephone and facsimile numbers, and, if the applicant is a business entity, the state or jurisdiction of incorporation and principal place of business; (2) the name and address of all parties involved in the transactions and their role, including financial institutions and any Iraqi broker, purchasing agent, or other participant in the purchase of the humanitarian aid; (3) the nature, quantity, value and the intended

use of the humanitarian aid; (4) the intended point(s) of entry into Iraq, proposed dates of entry and delivery, and the final destination in Iraq of the humanitarian aid; (5) a copy of the concluded contract with the Government of Iraq or the United Nations Inter-Agency Humanitarian Programme and other relevant documentation, all of which must comply with the provisions of UNSCR 986, other applicable Security Council resolutions, the Memorandum of Understanding, and applicable guidance issued by the 661 Committee; and (6) a statement that the applicant is familiar with the requirements of UNSCR 986, other applicable Security Council resolutions, the Memorandum of Understanding, and applicable guidance issued by the 661 Committee, particularly Memorandum of Understanding paragraph 24 and Guidelines paragraphs 35 and 45, and will conform the letter of credit and related financing documents to their terms.

Transactions related to travel to Iraq or activities within Iraq by U.S. persons are not authorized by the Regulations nor are debits to blocked accounts or direct financial transactions with the Government of Iraq. U.S. persons may, however, enlist and pay the expenses of non-U.S. nationals to travel to Iraq on their behalf for the purpose of assisting in obtaining an executory contract under UNSCR 986. Banking transfers into Iraq to persons in Iraq continue to be prohibited by Section 575.210 of the Regulations.

■ **TRAVEL** - All transportation-related transactions and services, or the use by U.S. persons of vessels or aircraft registered in Iraq, are prohibited. All travel-related transactions by U.S. persons are also prohibited, with narrow exceptions related to journalistic activity, official U.S. Government or United Nations business, reimbursement for the UNSCR 986 activities referenced above, or one's own departure from Iraq.

■ **FINANCIAL** - All transfers of funds by U.S. persons to the Government of Iraq or to persons in Iraq are prohibited, as are all commitments or transfers of credit, financial transactions, or contracts. Banks may not execute transfer instructions involving sending money to persons in Iraq, except as licensed, and must block any funds coming into their possession in which there is an interest of the Government of Iraq, including Specially Designated Nationals of Iraq or Iraqi financial institutions located anywhere in the world. "Suspense accounts" are not permitted. If banks receive instructions to transfer funds involving an interest of the Government of Iraq, they must block them on their own books.

Among other items, the Regulations provide the following guidance:

■ **STANDBY LETTERS OF CREDIT** - A number of companies were required to open bid, performance, or warranty bonds in the form of standby letters of credit to do business in or with Iraq before the Iraqi invasion of Kuwait. Special procedures have been established with regard to payment demands under standby letters of credit in favor of Iraq. Banks must "give prompt notice" to the party who opened the letter of credit (the account party) when there is an attempted drawing. The account party then has five days to apply to the Office of Foreign Assets Control for a specific license to prevent "payment" of the letter of credit into a blocked account. A bank may not make any payment, even into a blocked account, on behalf of an Iraqi beneficiary unless the account party fails to secure a Treasury Department license within 10 business days of notification from the bank. If the account party receives a license from the Treasury Department,

the original of the license should be presented to the bank and a special blocked reserve account must be established on the account party's corporate ledger to reflect its outstanding obligation to Iraq in lieu of the bank "paying" the letter of credit. The account party must certify to the Treasury Department that it has established the blocked reserve account. Nothing in this procedure precludes the account party or any other person from at any time contesting the legality of the demand from the beneficiary or raising any other legal defense to payment. Moreover, the issuing bank must continue to maintain the letter of credit as a contingent liability on its own books, despite any reserve account established by the account party. The obligations of the various parties under the letter of credit remain in effect as long as the Iraqi assets are blocked. They may be reevaluated and renegotiated to the extent permitted by law once the assets have been unblocked.

■ **SPECIAL REPORTS** - All parties engaging in transactions involving Iraq must keep accurate and comprehensive records. The Office of Foreign Assets Control may require reports on such activities at any time. The Treasury Department has required the filing of special census data on claims by U.S. nationals against Iraq (TDF 90-22.41) and on blocked Iraqi government property (TDF 90-22.40).

If you have information regarding possible violations of any of these regulations, please call the Treasury Department's Office of Foreign Assets Control at 202/622-2430. Your call will be handled confidentially.

The Office of Foreign Assets Control also administers sanctions programs involving Libya, The Federal Republic of Yugoslavia (Serbia and Montenegro) and Serb-controlled Bosnia, Cuba, North Korea, the National Union for the Total Independence of Angola (UNITA), Iran, Syria, Sudan, Burma (Myanmar), Terrorists who threaten to disrupt the Middle East peace process, and international Narcotics Traffickers. For additional information about these programs or about the Iraqi sanctions program, please contact the:

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